IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

***RFA No.23 & 84 of 1999*.**

Reserved on:07.09.2007.

Decided on: *October 31, 2007*

For title, please see over-leaf:

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] Yes

For the Appellant: }
} **Please, see over-leaf.**
For the Defendants: }

Kuldip Singh, Judge

This judgment shall dispose of RFA No.23 of 1999 and RFA No.84 of 1999 arising out of common judgment, decree dated 29.12.1998 passed by learned District Judge, Una in Civil Suit No.3 of 1990. RFA No.23 of 1999 has been filed by plaintiffs and RFA No.84 of 1999 has been filed by defendants. In this judgment, facts are given from RFA No.23 of 1999.

2. The brief facts of the case are that Kamla Devi etc. appellants in RFA No.23 of 1999 on 8.1.1986 filed a suit under Section 92 C.P.C. against Harbans Singh etc. for appointment of new trustees of public charitable trust of *Sarai* (Inn), a well and a *Chhabil* etc. situated on Khasra No.1809 to 1811 and 1941 abutting the chowk of Una – Talwara, Hoshiarpur – Hamirpur road at Amb, District Una. Harbans Singh died during the pendency of suit, his legal representatives Smt.Surendra, Raman and Rajesh were brought on record, the State of H.P. was

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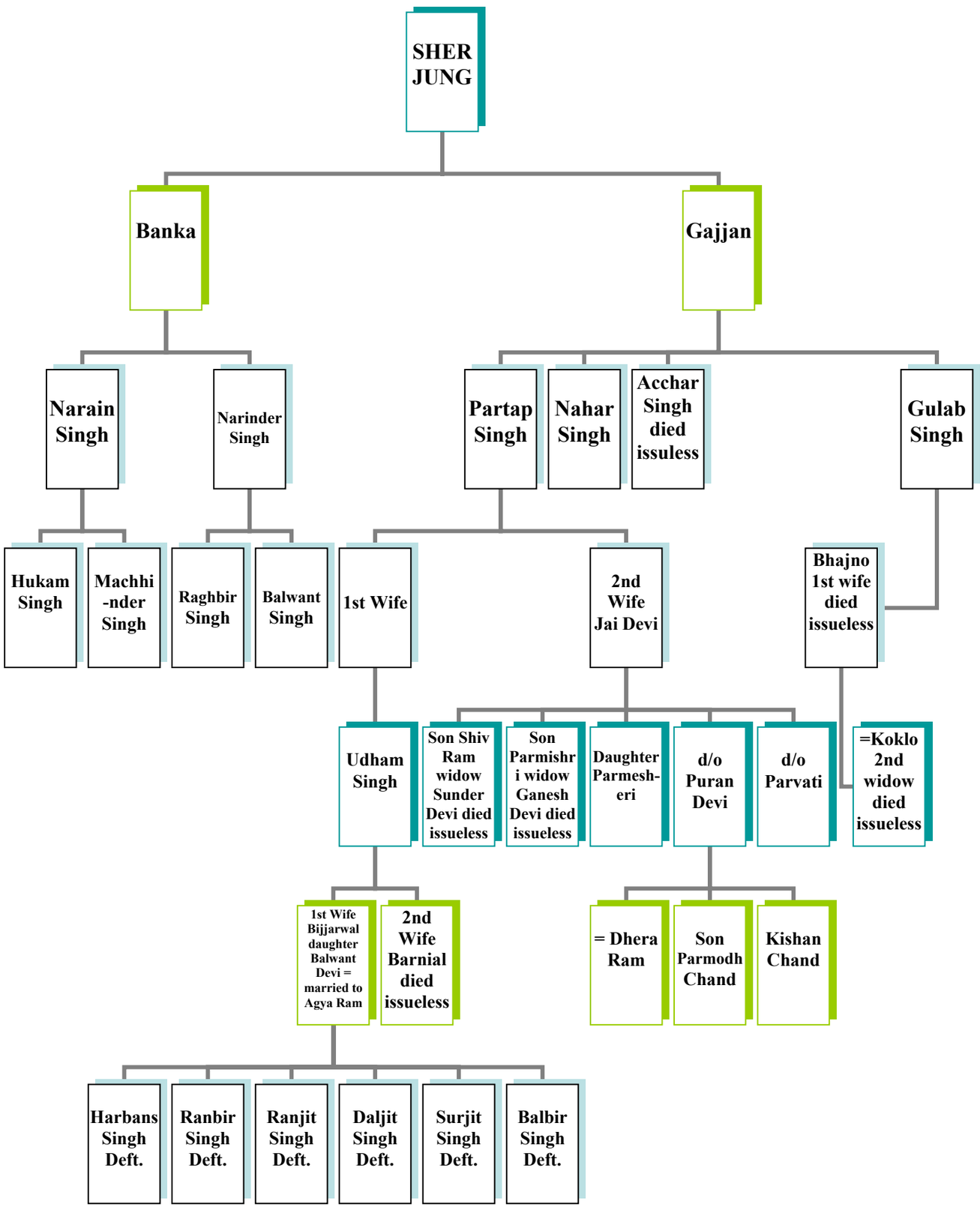
[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? No***

impleaded defendant No.7 and Gram Panchayat Amb defendant No.8. It has been alleged in the plaint that Udham Singh was resident of village Amb and defendants No.1 to 6 are his successors. In fact, Kashmir Singh, one of the plaintiffs and Udham Singh predecessor-in-interest of defendants had common ancestor. The pedigree table relied in the plaint is as follows:-



3. The further case is that forefathers of the parties had share in *Shamlat* land comprising Khasra No.1641, 1642, 1722 situated in village Amb as per settlement record prepared in the year 1913-14. A *Sarai* (Inn) was built on one Kanal land on Khasra No.1641 and left out area on this Khasra No. measuring 1 Kanal 16 Marlas was under cultivation. The Khasra No.1642 was part of courtyard of *Sarai*. The Khasra No.1722 was also under cultivation. On the death of Smt.Bhajno, Smt.Koklo and Smt.Shiv Devi the aforesaid land came to Udham Singh and thus Udham Singh came in possession of Khasra No.1641. Udham Singh sunk a well and built a *Chhabil* over land comprised in Khasra No.1722. He also constructed a room for letting out as a shop so that the income from the rent could be used for the maintenance and upkeep of the *Sarai*.

4. Udham Singh created public charitable trust by dedicating *Sarai*, courtyard of the inn along with one shop, well and *Chhabil* to general public. After dedication he became a trustee and manager of the said trust. On his death his widows Smt.Barnial and Smt.Bijjarwal became the trustees and managers of the trust. The *Shamlat* land was partitioned amongst co-sharers vide mutation No.462. The land under the *Sarai* got separated from other agricultural land. The land comprised in Khasra Nos.1641, 1642 (*Sarai),* 3920/1722 *Abadi* were shown as '*Rafai-Am'* in the revenue record as per Jamabandi for the year 1927-28 and continued as such till 1952-53.

5. Smt.Barnial died issueless. Smt.Bijjarwal gave birth to a daughter, namely, Smt.Balwant Devi who became a trustee with her mother. In the year 1954, Pubjab Village Common Land (Regulation) Act, 1953 came into force. As a result of this Act entire *Shamlat* land of village Amb vested in Gram Panchayat Amb vide mutation No.2021. However, trust continued to be managed by the trustees. After consolidation operations in village Amb, the Khasra Nos.4700/1641, 4701/1641, 1692, 1811, 3970 were changed to Khasra Nos.1809, 1810, 1811 and 1941 respectively. The entry in the column of ownership and cultivation remained unchanged in the name of trust.

6. Smt.Bijjarwal died on 25.2.1968 and was succeeded by her daughter Smt.Balwant Devi who died on 7.11.1980. The entry showing them as *Hissadar* in Jamabandis for the year 1967-68, 1976-77, 1980-81 are erroneous, their status was changed from Manager / Mohatmim to *Hissadar* without any basis.

7. On coming into force of the Himachal Pradesh Common Lands (Vesting and Utilization) Act, 1974 *Shamlat* lands had vested in the State except the lands used or reserved for village community. The trust or its property did not vest in the State nor the Act affected the use and nature of the trust.

8. After the death of Smt.Balwant Devi her sons – defendants No.1 to 6 started misusing the *Sarai*. They are not treating suit property as charitable public trust property, rather they are treating the said property as their personal property. The rooms

of the *Sarai* abutting the road including the shop have been demolished. The *Chabbil* is lying in dilapidated condition. The defendants are using the well for their personal use. The purpose of creating the trust has been defeated by the defendants. On these pleas the suit was filed.

9. The suit was contested by defendants No.1 to 6 by filing written statement in which they have taken preliminary objections that suit property is not public trust, hence suit under Section 92 C.P.C. is not maintainable. The pleas of *locus standi*, limitation and estoppel have also been taken. On merits, the correctness of the pedigree table has been disputed. The land was *Shamlat Deh* and was in possession of Udham Singh whose possession was hostile and adverse against all concerned. The land was not in possession of Smt.Bhajno or Smt.Koklo or Smt.Shiv Devi. Udham Singh had raised construction on the land as owner of the land. The *Sarai* was privately owned by Udham Singh who had constructed a building, sunk a well and constructed a shop on the land for his own use. Udham Singh never created a charitable trust of suit property nor did he ever dedicate the same to the public. The widow of Udham Singh never acted as Manager or trustee of the alleged charitable trust. The entries in revenue record as '*Rafai-Am'* are wrong. Smt.Balwant Devi, daughter of Smt.Bijjarwal, was mother of defendants No.1 to 6. The land over which the *Sarai*, well, *Chhabil* and shop were constructed had not vested in Gram Panchayat, Amb under Punjab Village Common Lands (Regulation)

Act, 1961 and H.P. Village Common Land (Vesting and Utilization) Act, 1974. Smt.Bijjarwal and her daughter Smt.Balwant Devi were sole owners of suit property as they stepped into the shoes of Udham Singh. In the record of rights prepared in the year 1956-57 and thereafter in succeeding Jamabandis Smt.Bijjarwal and her daughter Smt.Balwant Devi had been rightly recorded in possession as owners.

10. The *Sarai* had ceased to exist more than 40 years prior to the filing of the suit. The old shops have been renovated by the respondents without any objection from plaintiffs. The plaintiffs have no interest in the suit property. The plaintiff Kashmir Singh is not related to Udham Singh. The defendant No.7 did not contest the suit whereas defendant No.8 Gram Panchayat Amb has supported the plaintiffs.

11. The learned District Judge decreed the suit and directed defendants no.1 to 6 to hand over inn or site of the inn, well, and site of the *Chhabil* to the plaintiffs who shall function as trustees of the same for a period of two years from the date of decree. Thereafter all inhabitants of village Amb will constitute the trustees of the trust who after every two years shall elect from amongst them five persons as Managers to look after and carry forward the purpose of the trust for which it was created by Udham Singh. The management of the inn, well and *Chhabil* will vest in the inhabitants of the village Amb. The trust property shall be used for the convenience, lodging and boarding of pilgrims,

travellers and for general user of the populace of the village. The income of the trust property, if any, shall be invested for the improvement of the trust property and for the benefit and convenience of general public and travelers. In RFA No.23 of 1999 the appellants / plaintiffs have prayed for modification of the judgment to the limited extent insofar as the findings in Para-33 of the judgment in respect of the shops are concerned and prayed for decree of the suit in its entirety. In RFA No.84 of 1999 the appellants / defendants have prayed for setting aside the impugned judgment, decree.

12. I have heard Shri K.D.Sood, Advocate for the appellants / plaintiffs in RFA No.23 of 1999 and Shri Dushyant Dadwal, Advocate for appellants / defendants in RFA No.84 of 1999 and gone through the record.

13. Shri K.D.Sood, Advocate has submitted that learned District Judge has erred in not decreeing the suit of the plaintiffs in its entirety. He has submitted that plaintiffs have proved their case and, therefore, they are entitled to decree in its entirety. Shri Dushyant Dadwal, Advocate has submitted that learned District Judge has erred in decreeing the suit. The plaintiffs have failed to prove that the suit property was public charitable trust property. They have failed to prove dedication of the property. In fact, the suit property is personal property of defendants No.1 to 6. The learned District Judge has mis-interpreted the material on record and wrongly decreed the suit.

14. PW-1 Kashmir Singh has stated that Udham Singh was his ancestor. Udham Singh had constructed *Sarai,* well and *Chhabil* on the *Shamlat* land for charitable purposes and dedicated the same to the villagers. The pilgrims used to stay in the *Sarai.* Udham Singh used to manage the *Sarai* and well. Udham Singh had two wives, namely, Smt.Bijjarwal and Smt.Barnial. Smt.Bijjarwal had given birth to daughter Smt.Balwant Devi and defendants No.1 to 6 are her sons. After the death of Udham Singh, Smt.Bijjarwal used to manage the well and *Sarai* and after the death of Smt.Bijjarwal, Smt.Balwant Devi used to manage them. In his cross examination, he has stated that shops were also constructed adjacent to *Sarai.* He has stated that he does not know when *Sarai* and well were constructed but these were constructed by Udham Singh. The shops had fallen about 11-12 years ago. He has admitted that he had civil and criminal litigation with the defendants.

15. PW-2 Nathu Ram has stated that on Amb – Nehrian road there is a *Sarai,* well and *Chhabil* and he is seeing them since 1946. The well, *Chabbil* and *Sarai* were being used for charitable purpose. About 10-12 years ago defendant Harbans Singh etc. have demolished *Sarai* and constructed shops for their personal use. In cross examination, he has stated that earlier there was one shop which has been demolished. The keys of the *Sarai* used to remain with the family of defendants. The plaintiffs tendered in evidence documents Ext.P-5 to Ext.P-22 and closed their evidence

in affirmative. PW-3 Dharam Pal is a formal witness. PW-4 Nazar Mohd. has stated that there was a *Sarai* on Nehrian road which was used by general public. On the other side of the road, there were *Chhabil* and well from where people used to take as well as drink water. Now, at that place for the last 10-12 years there are 10-12 shops. In cross examination, he has stated that the cultivable land of the defendants is adjacent to the suit land.

16. DW-1 Ranvir Singh has stated that the disputed land is 8 kanals 2 marlas which was earlier in possession of Udham Singh and he was owner of this land. Udham Singh during his life time had constructed a residential house and shops. Udham Singh sunk a well on a part of this land. He had about 200 kanals land adjacent to the disputed land. Udham Singh had never dedicated the disputed land, property for public charitable purposes nor did he create a trust for this purpose. After the death of Udham Singh his property was succeeded by his two widows, namely, Smt.Bijjarwal and Smt.Barnial. The widows had also not dedicated the suit property for public charitable purpose. Smt.Barnial died issueless and Smt.Bijjarwal gave birth to Smt.Balwant Devi, mother of the defendants. In 1965-66 during consolidation the suit land was reserved by their mother Smt.Balwant Devi and in consolidation this land was allotted to Smt.Balwant Devi and Smt.Bijjarwal. During the life time of his mother and grand mother nobody objected for personal use of the property by the defendants. The house on the disputed land had fallen about 50 years ago and was never used as

a *Sarai.* The shops were earlier *kacha* and when those started falling then by raising parting walls of bricks, lintel was placed and in this process their mother had spent Rs.1,50,000.

17. DW-2 Kishan Chand has stated that he remained Member Gram Panchayat from 1978 to 1990. He had seen four shops and one well on the disputed land. The shops were earlier *kacha* which were made *pucca* later on by Smt.Balwant Devi. Now there are 11 shops on the spot. The defendants have tendered copy of Jamabandi 1971-72 Ext.D-1 and copy of Jamabandi 1976-77 Ext.D-2 in evidence. DW-3 Satpal has stated that earlier there was a well on the disputed land and also a *Chabbil.* Now there is a well and vegetable kiosk, earlier there used to be a *Sarai* having six rooms which has been demolished by Harbans Singh etc. and they have constructed 7-8 shops.

18. Ext.P-5 is the copy of *Misal Haquiat* 1913-14, Ext.P-6 copy of Jamabandi for the year 1915-16, Ext.P-7 copy of Jamabandi for the year 1919-20, Ext.P-8 copy of Jamabandi for the year 1927-28, Ext.P-9 copy of Jamabandi for the year 1931-32, Ext.P-10 copy of Jamabandi for the year 1935-36, Ext.P-11 copy of Jamabandi for the year 1939-40, Ext.P-12 copy of Jamabandi for the year 1943-44, Ext.P-13 copy of Jamabandi for the year 1943-44, Ext.P-14 copy of Jamabandi for the year 1952-53, Ext.P-15 copy of Jamabandi for the year 1956-57, Ext.P-16 copy of Misal Haquiat for the year 1965-66, Ext.P-17 copy of Jamabandi for the year 1966-67, Ext.P-18

copy of Jamabandi for the year 1980-81 and Ext.P-20 copy of consolidation scheme Mauza Amb.

19. The suit of the plaintiffs is with respect to the *Sarai,* well and *Chhabil* constructed on Khasra Nos.1809 to 1811 and 1941 abutting the chowk of Una – Talwara – Hoshiarpur – Hamirpur roads at Amb. The plaintiffs have pleaded that Udham Singh sunk a well and installed a *Chhabil* on the suit land. There is no specific pleading who constructed the *Sarai* on the suit land but PW-1 Kashmir Singh has stated that *Sarai,* well *and Chhabil* were constructed by Udham Singh. The most important question is whether any public charitable trust was created for *Sarai,* well *and Chhabil* and by whom.

20. The creation of public charitable trust by the settlor, as alleged by the plaintiffs, is to be seen from the evidence on record but before that law with respect to the creation of public trusts as held by some Courts is to be noticed.

21. In ***Deo Saran Bharthi*** *Versus* ***Deoki Bharthi ILR (3) Patna 842,*** it has been held that dedication to a deity and the creation of a trust for religious purposes no doubt finds favour in the Hindu law just in the same way as it does in the other communities and the essential ingredients that constitute a gift whether of moveable or immoveable property in the Hindu law is the *Sankalp* and the *Samarpan* whereby the property is completely given away and the owner completely divest himself of the ownership in the property. In ***Chandu Lal*** *Versus* ***Rampat Mal and another, AIR***

1933 Lahore 189, it has been held that it is necessary to prove the dedication. The following Para-438 of Mayne's Hindu Law, 9th Edn., has been quoted with approval:-

> "The last case arises where the founder applies his own property to the creation of a pagoda or any other religious or charitable foundation, keeping the property itself, and the control over it, absolutely in his own hands. The community may be greatly benefited by this arrangement, so long as it lasts, but its continuance is entirely at his own pleasure. It is like a private chapel in a gentleman's park, and the fact that the public have been permitted to resort to it will not prevent its being closed, or pulled down, provided there has been no dedication of it to the public."

22. In ***Menakuru Dasaratharami Reddi and another*** *Versus* ***Duddukuru Subba Rao and others, AIR 1957 SC 797,*** the Apex Court in Para-7 of the judgment has held that dedication to the charity need not necessarily be by instrument or grant. It can be established by cogent and satisfactory evidence of conduct of the parties and user of the property which show the extinction of the private secular character of the property and its complete dedication to the charity.

23. In ***The Bihar State Board of Religious Trust*** *Versus* ***Mahanth Sri Biseshwar Das, AIR 1971 SC 2057,*** the Apex Court in Para-14 and Para-15 has held as follows:-

"Evidence that the mahants used to celebrate Hindu festivals when members of the public used to attend the temple and give offerings and that the public were admitted to the temple for darshan and worship is also not indicative of the temple being one for the benefit of the public. The celebration of festivals is, according to Hindu belief, part and parcel of the puja of the deity. Such festivals are celebrated in family and other private temples also. The fact that members of the public used to come to the temple without any hindrance also does not necessarily mean that the temple is a public temple, for, members of the public do attend private temples. It is against Hindu sentiments to turn away persons who come to do worship and darshan. The mere fact, therefore, that no instance had occurred when persons from the public were asked to go away or the absence of proof that they were allowed on permission or invitation only cannot be conclusive of the temple being one in which the public have by user acquired interest.

… … Thus, the mere fact of the public having been freely admitted to the temple cannot mean that courts should readily infer therefrom dedication to the public. The value of such public user as evidence of dedication depends on the circumstances which give strength to the inference that the user was as of right. No such evidence of any reliable kind was available to the appellant – Board in the instant case."

24. In ***Darshan Lal and another*** *Versus* ***Ram Nath, 1998 (2) Shim.L.C. 243,*** a Division Bench of this Court has held that in order to prove the existence of public trust, the plaintiffs are required to lead evidence of dedication or creation of trust for religious and charitable purposes. In case no evidence is coming forward that the persons who at some point of time were owners and divested themselves of their right, title or interest and dedicated the property for public religious trust, the Court will not come to the aid of the plaintiffs. Whenever a public trust is created, a scheme is always formulated as to how the control and management would continue in the time to come and by whom.

25. The Apex Court in ***Kuldip Chand and another*** *Versus* ***Advocate General to Government of Himachal Pradesh and others, AIR 2003 SC 1685*** in Para-21 has held as follows:-

> "It is beyond any dispute that a Hindu is entitled to dedicate his property for religious and charitable purposes wherefor even no instrument in writing is necessary. A Hindu, however, in the event, wishes to establish a charitable institution must express his purpose and endow it. Such purpose must clearly be specified. For the purpose of creating an endowment, what is necessary is a clear and unequivocal manifestation of intention to create a trust and vesting thereof in the donor and another as trustees. Subject of endowment, however, must be certain. Dedication of property either may be complete or partial.

> When such dedication is complete, a public trust is created in contradistinction to a partial dedication which would only create a charity. Although the dedication to charity need not necessarily be by instrument or grant, there must exist cogent and satisfactory evidence of conduct of the parties and user of the property, which show the extinction of the private secular character of the property and its complete dedication to charity (See *Menakuru Dasaratharami Reddi V. Duddukuru Subba Rao, AIR 1957 SC 797).*

The Court in Para-49 has laid the guidelines to determine in the facts of each case, whether an endowment is of public or private nature, which is as follows:-

> "i) Where the origin of the endowment cannot be ascertained, the question whether the user of the temple by members of the public is as of right;
>
> ii) The fact that the control and management vests either in a large body of persons or in the members of the public and the founder does not retain any control over the management. Allied to this may be a circumstance which the evidence shows that there is provision for a scheme to be framed by associating the members of the public at large;
>
> iii) Where, however, a document is available to prove the nature and origin of the endowment and the recitals of the document show that the control and management of the temple is retained with

> the founder or his descendants, and that extensive properties are dedicated for the purpose of the maintenance of the temple belonging to the founder himself, this will be a conclusive proof to show that the endowment was of a private nature;
>
> iv) Where the evidence shows that the founder of the endowment did not make any stipulation for offerings or contributions to be made by members of the public to the temple, this would be an important intrinsic circumstance to indicate the private nature of the endowment."

It has been further held that even if a part of *Dharamshala* was used by the general public for long time but continuance of such a benevolent acts / charity would not lead to creation of a trust. The plaintiffs in the present case have failed to prove the tests laid down by the Apex Court to prove that suit property is public charitable trust property.

26. The plaintiffs have led some evidence with respect to the fact that *Sarai*, well and *Chabbil* were constructed on the suit land. It is the case of the plaintiffs that the suit property was managed by Udham Singh or his successors. It has also come in evidence that major part of the suit property was reconstructed by the successors of Udham Singh for which no contribution was made from general public. The plaintiffs have led no evidence regarding the dedication of the suit property by settlor for the use of suit property by general public nor has any evidence been led that at

any point of time Udham Singh or his successors divested their ownership in the suit property in favour of the general public. There is nothing on record regarding any scheme for the management of suit property and how the alleged trust was to be managed during the life time of Udham Singh and after his death. The suit property, even as per plaintiffs, continued to be managed by Udham Singh or his successors. In ***The Bihar State Board of Religious Trust's case (supra)*** and ***Kuldip Chand's case (supra),*** the Apex Court has held that mere user of the property by the general public is not sufficient for holding that the trust was created for general charitable purposes.

27. In the present case no evidence has been led regarding the intention of Udham Singh, Smt.Bijjarwal, Smt.Barnial and Smt.Balwant Devi for creation of alleged trust. PW-1 Kashmir Singh has not stated when Udham Singh created public charitable trust regarding *Sarai,* well and *Chhabil* nor he has stated since when he had been seeing user of *Sarai,* well and *Chabbil* for public charitable purposes. He has admitted that he has civil and criminal litigation with the defendants. He is thus not an independent witness. PW-2 Nathu Ram in the year 1998 has given his age 69 years. In other words, he was born in the year 1929. He has stated that he is seeing *Sarai,* well and *Chhabil* since 1946. He is resident of Amb where the suit property is situated. Therefore, since his birth he is expected to be aware of the *Sarai, well and Chhabil.* As per case of the plaintiffs, *Sarai,* well and *Chhabil* were constructed

somewhere in between 1910-1920. Therefore, his statement regarding creation of public charitable trust for *Sarai,* well and *Chhabil* is not reliable. PW-4 Nazar Mohammad has given his age 71 years in the year 1998. He has stated that there was *Sarai* on Nehrian road which was used by general public and on the other side of the road were well and *Chhabil* which were also used by general public. He has stated that for the last 10-12 years now there are shops at that place. He has nowhere stated that *Sarai,* well and *Chhabil* were dedicated to general public by creating public charitable trust. He has also not stated since when *Sarai,* well and *Chhabil* were being used by the general public. The statement of PW-4 Nazar Mohammad nowhere proves dedication, creation of public charitable trust of the suit property by Udham Singh or his successors. On the basis of vague evidence led by the plaintiffs, it cannot be held that public charitable trust was created by Udham Singh or his successors. The valuable rights of a person in a property cannot be wiped out by vague statements of creation of public charitable trust. The creation and dedication of public charitable trust requires strong evidence which is completely lacking in the present case.

28. The documentary evidence of plaintiffs is not as per the pleaded case of the plaintiffs. In Ext.P-5 *Misal Haquiat* 1913-14 Khasra No.1642 has been shown courtyard of *Sarai* and Khasra No.1722 *Nehri Abadi* both in possession of Udham Singh. On a part of Khasra No.1641 *Sarai* has been shown in possession of Smt.Bhajno, Smt.Koklo and Smt.Shiv Devi. As per Ext.P-5 *Sarai* was constructed at least during the life time of Smt.Bhajno, Smt.Koklo and Smt.Shiv Devi and they were in possession thereof. According to Ext.P-5 *Sarai* was not constructed by Udham Singh nor it was possessed by him in the year 1913-14. The plaintiffs

case is that *Sarai* was constructed by Udham Singh. Their this stand is not supported by revenue record.

29. The suit property for the first time came to be shown as '*Rafai-Am'* and under the management of Smt.Bijjarwal and Smt.Barnial vide Jamabandi for the year 1927-28 Ext.P-8, before that in Ext.P-5, Ext.P-6 and Ext.P-7 Jamabandi for the year 1919-20, the suit property has not been shown '*Rafai-Am'.* The entry of '*Rafai-Am'* has been repeated in Jamabandi for the year 1931-32 Ext.P-9, Jamabandi for the year 1935-36 Ext.P-10, Jamabandi for the year 1939-40 Ext.P-11, Jamabandi for the year 1943-44 Ext.P-12, Jamabandi for the year 1943-44 Ext.P-13, Jamabandi for the year 1952-53 Ext.P-14. It appears that somehow entry of '*Rafai-Am'* came in the Jamabandi for the year 1927-28 Ext.P-8 and, therefore, it was repeated in the subsequent Jamabandis up to 1952-53. It has been submitted on behalf of the plaintiffs that in Jamabandi for the year 1956-57 Ext.P-15 and subsequent Jamabandis the entry of '*Rafai-Am' has been* changed unauthorizedly. The presumption of truth is attached to Jamabandis Ext.P-8 to Ext.P-14 and, therefore, the plaintiffs have proved creation of public charitable trust by the settlor regarding the suit property. This submission appears to be attractive but on scrutiny of the record it is found hollow, the entry of '*Rafai-Am' etc.* in Ext.P-8 to Ext.P-14 is unauthorized and cannot be relied for creation of public charitable trust. In ***Durga (deceased) and others*** *Versus*

Milkhi Ram and others, 1969 PLJ 105, the Apex Court has upheld the observations of the High Court in Para-3 of the report as under:-

> "… … There is no order of the revenue authorities showing how the change was made. Thus although the presumption would be in favour of the later entries but that presumption was a rebuttable one and it would stand rebutted by the fact that the alteration in the entries in 1929-30 was made unauthorizedly or mistakenly, there being no material to justify the change of entries"

30. In the present case, the plaintiffs have placed nothing on record to show how in the Jamabandi for the year 1927-28 Ext.P-8 entry of '*Rafai-Am'* and under the management of Smt.Bijjarwal and Smt.Barnial has come, no mutation or order of revenue officer ordering the change of the entry has been placed on record. The Jamabandis after the year 1927-28 up to the year 1952-53 are based upon the Jamabandi for the year 1927-28. The entry of '*Rafai-Am'* etc. in the Jamabandi for the year 1927-28 is unauthorized and, therefore, no presumption of truth is attached to the Jamabandis for the year 1927-28 to 1952-53 regarding the suit land. It appears while preparing Jamabandi for the year 1956-57 the revenue authorities realized the mistake and accordingly correction was made by deleting the entry of '*Rafai-Am'* etc. and restoring the earlier position in the Jamabandi for the year 1956-57 Ext.P-15 onwards. No fault can be found with respect to the Jamabandis regarding the suit land prepared after the year 1952-

53. The latest revenue record is in favour of the successors of Udham Singh regarding the suit property to which presumption of truth is attached.

31. It is the case of the plaintiffs that substantial part of the suit property has been changed by the successors of Udham Singh by way of renovation, reconstruction and this was done many years back. There is nothing on record to show that at the time of such renovations, reconstruction anybody from plaintiffs or general public protested questioning the right of the successors of Udham Singh to make such changes in the property. It is also not the case of the plaintiffs that other than the successors of Udham Singh anybody from the plaintiffs or from general public contributed for renovation, reconstruction of the suit property. This conduct of the plaintiffs and the general public indicates that the suit property was never dedicated or meant for public charitable purposes, rather it continued to be the exclusive property of the successors of Udham Singh. The learned District Judge has misconstrued the evidence on record in decreeing the suit of the plaintiffs. The plaintiffs have failed to prove that the suit property was dedicated by Udham Singh or his successors for public charitable purposes or Udham Singh or his successors at any point of time divested their ownership of suit property in favour of general public. The learned District Judge has erred in decreeing the suit of the plaintiffs. The impugned judgment and decree are not sustainable and liable to be set aside.

32. No other point was urged.

33. The result of the above discussion is that RFA No.84 of 1999 is allowed, impugned judgment and decree are set aside. RFA No.23 of 1999 is dismissed and consequently suit filed by plaintiffs is also dismissed. No costs.

October 31, 2007 ***(Kuldip Singh)***
(soni) ***Judge.***

1. ***RFA No.23 of 1999***:

Kamla Devi & Ors. *Versus* **Surindra & Ors.**

For the appellants: **Mr.K.D.Sood, Advocate.**

For the respondents: **Mr.Dushyant Dadwal, Advocate for respondents No.1 to 8.**

Mr.M.S.Chandel, Advocate General with Mr.M.L.Chauhan, Addl.A.G., for respondent No.9.

2. ***RFA No.84 of 1999****:*

Surindra & Ors. *Versus* **Kamla & Ors.**

For the appellants: **Mr.Dushyant Dadwal, Advocate.**

For the respondents: **Mr.K.D.Sood, Advocate for respondents No.1(a) to 1(d) and 2 to 4.**

Mr.M.S.Chandel, Advocate General with Mr.M.L.Chauhan, Addl.A.G., for respondent No.5.

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IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RFA No.84 of 1999.

Reserved on: September 07, 2007.

Decided on: October 31, 2007

Surindra & Ors. ***….Appellants.***

Versus

Kamla Devi & Ors. ***…Respondents***

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[2]

For the Appellants: **Mr.Dushyant Dadwal, Advocate.**

For the Respondents: **Mr.K.D.Sood, Advocate for respondents No.1(a) to 1(d) and 2 to 4.**

Mr.M.S.Chandel, Advocate General, with Mr.M.L.Chauhan, Addl. A.G. for respondent No.5.

Kuldip Singh, Judge

For judgment, see Judgment of even date, rendered in ***RFA No.23 of 1999*** *titled* ***Kamla Devi & Ors.*** *Versus* ***Surindra & Others.***

October 31, 2007 ***(Kuldip Singh), J.***

(soni)

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[2] ***Whether the reporters of the local papers may be allowed to see the Judgment?***